



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2404707

Applicant Name : Anthony Pydych

Address of Proposal: 2109 North 39th Street

SUMMARY OF PROPOSED ACTION

Master Use Permit for future construction of a 595 sq. ft. second story addition and a 293 sq. ft. two story with basement addition to an existing single family residence (already constructed).

*Note: The project description has been revised to clarify the size/types of proposed additions from the original notice of application.

The following approvals are required:

Variance – to allow expansion of a nonconforming structure (SMC - 23.42.106).

Variance – to allow portions of the principal structure to extend into required front yard
(Required: 16.75' Proposed: 10.07' - SMC 23.44.014.B).

Variance – to allow portions of the principal structure to extend into required rear yard
(Required: 10' Proposed: 5.5' - SMC 23.44.014.B).

SEPA DETERMINATION: ☒ Exempt ☐ DNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving
another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The 1.817 square foot (sq. ft.) site is located in a Single Family 5000 (SF 5000) zone on the south side of North 39th Street. The existing lot is nearly square in shape measuring 46' in width and 40' in depth and is oriented north to south. The subject property originally contained a 1 1/2 story single family residence with a partial daylight basement and basement garage whose driveway access fronts on North 39th Street. The existing house was built in 1924, prior to the adoption of the City of Seattle's present zoning laws regulating rear and front yard setbacks. The footprint of the house is slightly askew relative to the existing property lines. Therefore, the average setbacks of the existing structure are the following; 10.07' from the north property line, 15.3' from the east property line, 5.5' from the south property line and 5' from the west property line.

The site slopes moderately downward from west to east. No Environmentally Critical Areas (ECA) has been identified on the site.

The residences in the neighborhood are predominantly one to two-story homes. The surrounding zoning is primarily Single Family 5000 (SF 5000) with predominantly single family residential developments in the vicinity.

Proposal Description

The owners are in the process of constructing a second-story addition approximately 595.4 sq. ft. to the existing home as well as a two-story with a daylight basement addition (approximately 292.8 sq. ft. of floor area) along the existing structure's east wall façade. Portions of both additions (including 1.5' eave overhangs) are not allowed under current Land Use code because they extend into the required front and rear yards. Therefore, the owners are seeking variances to allow for these partially built additions.

The entire south façade of the house is an existing nonconformity in regards to current rear yard requirements, i.e. ten feet (10') per SMC 23.44.014.B. The existing house is currently 5.5' from the rear property line. The applicant requests to construct a second-story addition above the existing structure's footprint creating 109.8' of non-conforming interior space and then be allowed to expand eastward an additional 4' flush with the existing rear wall; thus creating 18 sq. ft. of non-conforming footprint and 54 sq. ft. of non-conforming interior floor area.

Additionally, the existing structure's north front façade is entirely nonconforming to current front yard requirements. By averaging against the existing front yards of the neighboring structures as allowed per SMC 23.44.014.A.1, the required front yard for the subject property is 16.75'. Additionally, per SMC 23.44.014.D.3.c, additions to certain nonconforming walls may extend into the required front yard except that the addition may be no closer than fifteen feet (15') to the front lot line. The existing house is 10.1' from the front property line. The proposed additions, second-story addition and two-story with basement addition, will create 119.6 sq. ft. and 58.8 of nonconforming interior space respectively.

Public Comment

Public notice of the proposed project ended on November 3, 2004. Four written comment letters were received during this period. One neighbor supported the variance stating that the additions are “a great improvement to the house and positive for the neighborhood”. The remaining neighbors expressed the following comments:

- The proposal doesn’t abide to the setback laws regarding safety and respect to other’s surroundings.
- By allowing this variance allows the opportunity for future variances.
- Concerns regarding the quality of construction that has already occurred to the house without the owner having a construction permit.
- Concerns regarding the proximity of future additions to neighboring properties.

Additional Information

The Department of Planning and Development (DPD) has issued a Notice of Violation (Case #1003255) regarding the construction of the additions without a construction permit. Due to the placement of the additions on the existing structure, the applicants must obtain a variance prior to acquiring a construction permit.

The fact that a considerable amount of construction has occurred on the subject site does not weigh into the analysis and decision of this variance application.

ANALYSIS - VARIANCES

As provided in SMC 23.40.020, variances from the provisions or requirements set forth in the Seattle Municipal Land Use code shall be authorized only when all of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;*

One unusual condition applicable to the subject property is the size of the subject property. The site’s size is 1,840 sq. ft. which is considerable smaller than the required 5,000 sq. ft. minimum site size in that zone. It is the smallest parcel on its block. Tax records indicate the existing home was built in 1924. The current owners purchased the property in 2002 and were not involved in the creation of the substandard lot size or the existing nonconformities.

A second unusual condition applicable to the subject property is the limited amount of buildable area the owner has available to construct a code complying structure footprint. A rectangular lot size of 5,000 sq. ft. would have a building area of 2,400 sq. ft. once the required yards (front, sides and rear) were subtracted from the lot size. In comparison, when the required yards are applied to this lot, the buildable area is 504 sq. ft.

Thirdly, the existing house is nonconforming to current land use code standards. The existing structure has a front yard of 10.07' when the required front yard is 16.75' and a rear yard of 5.5' when the required rear yard is 10'. The original footprint of the house is a preexisting condition not created by the current owners.

Due to the lot's size and existing structure orientation, a Land Use Code complying design would not allow any additional footprint directly above the north and south façade walls. Given the above mentioned site constraints, the request for a variance to encroach into the front yard and the rear yard over existing building footprint is sensible. Because of the unusual conditions applicable to the subject property, including site size and location of the existing house, which are not created by the applicant, the strict application of the Land Use Code would deprive the property of the rights and privileges enjoyed by other property owners in the same zone or vicinity. Most properties in the vicinity are substantially larger in land area than the subject site, and appear to enjoy larger structural footprints and many are two-story structures.

2. *The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

The owners of the subject parcel are proposing to add a second story addition above the existing footprint and a two-story with basement addition along the structure's east wall façade. As previously discussed, the location of the house is approximately 10.07' from the front property line and 5.5' from the rear property line. The owner would be deprived of additional habitable space if the upper floor of the existing 24.4x24.4 house was setback approximately 6.75' and 4.5' from the front and rear property lines respectively; thus, creating an upper addition whose maximum length would be 13.15'. The owner is requesting to take advantage of the existing footprint in the front and rear yards to create additional habitable space and create a façade that is consistent with other single family residences in the vicinity. The additions would increase the height, bulk and scale of the structure in both the front and rear yards. But, these additions seem reasonable and would not significantly alter the existing streetscape.

Therefore, the requested variance would not go beyond the minimum necessary to afford relief and would not constitute a grant of special privilege.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located.*

The proposed encroachments into the required front and rear yards (10.07' and 5.5' respectively) do not present any material detriment to the abutting properties. The location of the house abuts the rear yard of the corner lot addressed as 3834 Meridian Avenue North, the rear yard of the property addressed as 3828 Meridian Avenue North and the side yard of the neighboring lot 2113 North 39th Street. The subject property and its neighboring lots are separated by a combination of a fence and retaining walls. The new additions will be minimal and not out of character with the rest of the neighborhood. Nor will it restrict or block views from the neighbors given the vicinity's sloping properties. Therefore, the proposal would not likely be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulties;*

The literal interpretation and strict application of the Land Use Code would require that the second story addition and two-story (with basement) addition is setback 15' from the front property line and 10' from the rear property line. Literal interpretation and strict application of the Land Use Code would cause practical difficulties for the property owners.

With a lot depth of just 40' and the site location of the existing home, strict application of the Land Use Code would result in a structure that is both functionally and structurally awkward. The owners seek to expand their interior living space within the constraints and opportunities presented by the configuration of the existing structure. According to the applicant, strict application of the standards would hinder their opportunity to construct code compliant stairs while still keeping a similar room arrangement on the existing floors. Also a comparable massing located in a conforming location on the site would disrupt the relationship and use of existing rooms and require additional electrical, plumbing and foundation upgrades.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code regulations for the area.*

The purpose of the Land Use Code is to protect and promote public health, safety, and general welfare through a set of regulations and procedures for the use of land which conforms to the City's land use policies. Procedures are established to increase citizen awareness of land use activities and their impacts and to coordinate necessary review processes. These provisions are designed to provide adequate light, air, access, and open space.

The owners of the subject lot are seeking three variances that, if granted, would allow the expansion of a legal nonconforming single family home. The spirit and purpose of the Land Use Code provides flexibility as an important directive to allow the residents of single-family residential areas maximum use and enjoyment of their homes. As proposed, this application has attributes that are within the spirit and purpose of the Land Use Code.

The Code contains many provisions aimed at encouraging the reuse and reconstruction of existing single family structures. Allowing the horizontal expansion of the existing structure along the present façade

line and construct a second-story addition over the existing footprint preserves the current character of the streetscape while encouraging reuse of a single family building and thus is consistent with the spirit of the Land Use Code.

DECISION-VARIANCE (based upon approved plans in the file)

Variance - to allow expansion of a nonconforming structure (SMC 23.42.106) is **GRANTED**.

Variance - to allow portions of the principal structure to extend into required front yard (Required: 16.75' Proposed: 10.07' - SMC 23.44.014.B) is **GRANTED**.

Variance – to allow portions of the principal structure to extend into required rear yard (Required: 10' Proposed: 5.5' – SMC 23.44.014.B) is **GRANTED**.

CONDITIONS-VARIANCE

None.

Signature: _____ (signature on file) Date: March 17, 2005
Tamara Garrett, Land Use Planner

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